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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,284	03/05/2002	Duncan Roger Harper	10660-070US (10279P1)	5606

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EXAMINER

METZMAIER, DANIEL S

ART UNIT PAPER NUMBER

1712

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,284

Applicant(s)

HARPER ET AL.

Examiner

Daniel S. Metzmaier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03052002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1 and 3-24 are pending.

Claim interpretation

1. Applicants have amended their claims to now define the difference between the theoretical conductivity and the bulk (actual) conductivity. Said change is broader than original claim 2. This difference is deemed to always be a positive number since the difference is the absolute value of the difference or change. Noting applicants' comparative examples 1 and 3, said examples optionally include claimed component (d). Said comparative examples read on the claimed difference, which is 0.8 in comparative example 1 and 7.0 in comparative example 3.

Applicants may wish to denote the subgenus components (d) in claim 9 to other than a), b), c), and d), to avoid confusion with the separate components (a), (b), (c) and (d), of claim 1 that claim 9 depends.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 3-16 are rejected under 35 U.S.C. 102(b) as being being anticipated by Bassam et al. 5,849,264. The claims of Bassam et al. refer to an insecticidal composition in the form of water-in-oil emulsion comprising 2-80% w/w propellant, (b) 0.5-8% w/w of one more emulsifiers selected from di- and tri-sorbitan

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esters, polyglycerol esters, etc. 1-20% w/w of a solvent selected column insecticide and from carboxylic acid (e.g. fatty acids lines 65-67) 0.001-5% w/w of a pyrethroid bring the total composition to 100% w/w. Component (d) comprises carboxylic acids and diethyl orthophthalate as well. The solvents of Bassam et al. are Water selected from fatty acid and dialkyl phthalates. Hence, as long as applicants such fatty acids cannot clearly and unambiguously demonstrate that will not fulfill the conductivity and phthalates criteria of claim the compositions are deemed to be anticipated by Bassam et al.

4. Claims 17-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fox et al., WO 99/21659. The claims of Fox et al describe an aerosol spray device and method of reducing the droplet size of a composition sprayed from such device. The preferred aerosol composition comprises an oil phase, an aqueous phase, a surfactant and a compressed propellant (page 8, lines 4-12). A charge is imparted to the liquid droplets solely by the interaction between the liquid within the aerosol spray device and the spray device itself as the liquid is sprayed therefrom (page 2, line 22 – page 3, line 22).

5. Claims 1, 3-13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Stopper 4,536,323, esp. column 4, line 34 - column 5, line 19, noting also column 3, line 55 - column 4, line 19. Sodium lauryl sulfate in the typical composition in column 4 would fulfill the conductivity criteria of claim 1 herein.

Response to Arguments

6. Applicant's arguments filed March 11, 2004 have been fully considered but they are not persuasive.

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7. Applicants (page 10, second full paragraph) assert the Bassam et al reference includes the components of the compositions claimed but do not disclose the conductivity levels. Applicants assert they have highlighted the lack of the conductivity measurements in the Bassam et al reference by incorporating the limitation of claim 2 into claim 1. Initially, please see claim interpretation above. The Bassam et al reference, as pointed out by applicants, discloses the claimed components. The difference in conductivities would have been inherent to the Bassam et al reference compositions. Said conclusion is further supported by applicants' own examples and comparative examples showing said difference for related compositions.
8. Applicants (pages 10 to 12) assert the Fox et al reference imparts a charge to the liquid droplets solely by the interaction between the liquid and the aerosol device. It is further asserted that the instant invention selectively chooses the composition components to impart a charge. This has not been deemed persuasive since the Fox et al reference discloses the claimed compositions employed in the claimed processes. See page 8, lines 4-23, particularly lines 21-23; wherein aromatic naphthalene is clearly disclosed in the Fox et al reference. Attention is further directed to instant claim 18 and paragraph numbers [0029] (page 6, line 24) and [0038]¹.
9. Applicants' (page 11) assertions regarding the spray device of claims 21-23 and the charge difference have not been deemed persuasive. Initially, the compositions are deemed to be anticipated and therefore the device with said compositions would have been anticipated. Applicants do not assert the apparatus is *per se* novel but that the

novelty is based on the selection of the compositions selected for said apparatus. Since said compositions are anticipated, it is concluded the apparatus claims are likewise anticipated.

Furthermore, the material contacted by the spray is not part of the apparatus and amounts to a limitation of intended use dependent on the materials being contacted rather than the apparatus. Said limitation has been given little or no patentable weight.

10. Applicants (page 12) traverse the rejection over the Stopper reference for the same reasons set forth in the traversal of the Bassam et al reference. These have been addressed above and have not been deemed persuasive for the aforesaid reasons, which are incorporated herein by reference for the Stopper reference.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. CPC International, Inc, GB 1,445,813, cited in applicants', March 5, 2002, IDS is considered cumulative to Bassam et al for at least claim 1.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

¹ It is noted the paragraph numbers employed are those of the application papers and that said numbers

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM